ejectment of a tenant therefrom shall be made or given unless the Court considers it reasonable to make such an order or give such a judgment, and....." I appreciate that there is no corresponding provision in our legislation, but I feel that our Courts are not without a discretion in the matter. It would be unfortunate indeed if a landlord could, as the landlord seeks to do in the present case, avail himself of a breach of contract on his own part to secure for himself, on the strength of what in reality is only technically an arrears of payment of rent, recovery of possession of premises which ordinarily he could not recover without submitting his case to the Rent Assessment Board. If it is open to argument that such a discretion does not exist under our Control of Rent Ordinance, 1948, it seems to me that it is a case in which the learned President should have exercised the inherent power of the Court — in the words of section 597 of the Civil Procedure Code, F.M.S. (Cap. 7) — "to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court". I am aware that the F.M.S. Civil Procedure Code does not apply to Kelantan, but it has been a recognised practice to follow the provisions of the F.M.S. Code where, as in the present instance, the Kelantan Enactment is silent. In any event since the power is inherent statutory sanction is not essential. In the circumstances I think the learned President should have decided the claim for ejectment in favour of the appellant.

As regards the claim for arrears of rent I am satisfied the appellant owes something to the respondent, but I cannot accept the view that it is $560, the sum claimed by the respondent and awarded by the President. It is clear that such a claim ignores the fact that portion of the sum of $70 per month paid originally was in respect of the licence, although what the portion was remains to be ascertained. I do not think there is any obligation on me to try and disentangle this point. Accordingly I also set aside the learned President's decree for payment of arrears of rent, but the respondent will be at liberty to take action afresh for the recovery of the arrears of rent due to him since 1st March 1950 if he so wishes.

I accordingly allow this appeal, and set aside the Order of the President of the Sessions Court. I make an Order for costs in favour of the appellant.

Appeal allowed.

STEWART v. STEWART.

[Special Case (Spenser Wilkinson, J.) August 26, 1952]

[Penang — Sessions Court Criminal Case No. 1126 of 1952]

Maintenance — Whether a criminal cause or matter — Special case stated — Right of appeal.

This was a special case stated by the President of the Sessions Court in Penang under section 317 of the Criminal Procedure Code relating to the confirmation of a Provisional Maintenance Order made against the respondent by a Police Court in Singapore.

Held, that (1) an application by a wife for maintenance for herself and her children or an application by a husband to vary the amount ordered to be paid by way of maintenance is a civil matter; (2) although there is a right of appeal under section 50(2) of the Courts Ordinance 1948, section 317 of the Criminal Procedure Code has no application and there is no provision for a Sessions Court to state a case in a civil matter.

Cases referred to:—

(1) *Chew Cheng Swee v. Chan Chye Neo* (1932) M.L.J. 5.

(2) *Kok Heng Chow v. Lay Mee Yin* (1948) M.L.J. 157.

(3) *Wong Eng Fook v. Ho Kiat Moi* (1949) M.L.J. 96.

SPECIAL CASE RESERVED for consideration of the High Court under section 317 of the Criminal Procedure Code (Cap. 21).

C. M. Sheridan (D.P.P.) for the Crown.

O. L. Phipps for the respondent.

Spenser Wilkinson, J. : — This was a special case stated by the President of the Sessions Court under section 317 of the Criminal Procedure Code relating to the confirmation of a Provisional Maintenance Order made against the respondent by a Police Court in Singapore.

At the outset the learned Deputy Public Prosecutor took the preliminary objection that a proceeding relating to the maintenance of wives and children is a civil matter and that an appeal from a decision of a Sessions Court or a Magistrates' Court in any such proceeding is a civil appeal.

In the case of *Chew Cheng Swee v. Chan Chye Neo*[1] it was decided by a strong Court of three Judges that no appeal lay from the decision of a District Court of the Straits Settlements refusing to vary the amount of maintenance ordered to be paid by a husband to a wife, because this was not a criminal cause or matter. It was there held that the mere obtaining of an order to pay or a variation of the amount to be paid is a civil stage of the proceedings, although the subsequent enforcement of an order may

be a criminal matter. The case of *Koh Heng Chow v. Lay Mee Yin*[2] was a decision to the same effect. In *Wong Eng Fook v. Ho Kiat Moi*[3] Russell, J., held that an order of a Magistrate in a maintenance case was a criminal matter; but in that case the appellant had defaulted in respect of a previous order so that this decision (which is not fully reported) appears to be entirely consistent with the decision in *Chew Cheng Swee's*[1] case.

So much for the decided cases. It is now necessary to consider the present statute law in order to see whether the cases above cited are still good law. It looks at first sight from the provisions of the Courts Ordinance, 1948 as though the Legislature intended that all appeals in matters relating to the maintenance of wives and children should be in the form of civil appeals. Under the heading of "Appellate Jurisdiction of the High Court" there are four sections. The first (section 48) lays down the appellate criminal jurisdiction of the High Court. Section 49 then provides that the appellate civil jurisdiction of that Court shall consist of the hearing of appeals from Sessions Courts and Magistrates' Courts "as hereinafter provided". Section 50 then deals in sub-section (1) with appeals in civil cases or matters where the amount of the subject matter exceeds $100 and sub-section (2) reads as follows:—

> "(2) An appeal shall lie from any decision of a Sessions Court or Magistrates' Court in any proceedings relating to maintenance of wives or children irrespective of the amount involved."

Finally section 51 provides that all civil appeals shall be by way of re-hearing.

Since the Courts Ordinance was passed there have been two new Ordinances dealing with the subject of maintenance of wives and children. These are the Maintenance Orders (Facilities for Enforcement) Ordinance, 1949 and the Married Women and Children (Maintenance) Ordinance, 1950. These Enactments do little to dispel the fog which prior to the Courts Ordinance, 1948 had obscured the question of whether maintenance proceedings in the Lower Courts was civil or criminal in their nature. The 1949 Ordinance hardly touches on this question, but it is to be observed that in this Ordinance the expression "local Court" is defined as "a Sessions Court or a Magistrates' Court having jurisdiction to try suits relating to maintenance of wives or children". Although the word "suit" has been used in a large variety of senses in various Acts of Parliament it seems to me that the modern tendency is to use this word more in connection with civil matters than in criminal proceedings. This definition, therefore, tends to confirm the suggestion that the Legislature looks upon the question of maintenance of wives and children as a civil rather than a criminal matter.

Unfortunately when the Legislature came to re-enact and unify the law in the Federation by means of the 1950 Ordinance it did not think fit to clarify the point which now arises for decision. Having taken the proceedings relating to the maintenance of wives and children out of their somewhat criminal context in the Minor Offences Ordinance of the Straits Settlements and the Criminal Procedure Code of the Federated Malay States the Ordinance proceeds to throw the proceedings back onto a quasi-criminal plane by enacting in section 10 that "All applications to a Court under this Ordinance shall be made and heard substantially in the same manner and in accordance with the same procedure as applications under" the earlier Enactments. The result of this section is that applications by wives for maintenance are made not under the Subordinate Courts Rules, 1950 on the civil side of the Court but under the old procedure by summons to show cause on the criminal side.

Nevertheless, although the 1950 Ordinance does nothing to clear up this question, at least it has made no substantial alteration in the law. I am, therefore, of opinion that the decision in the case of *Chew Cheng Swee v. Chan Chye Neo*[1] is as much applicable to the provisions of the 1950 Ordinance as it was to the Minor Offences Ordinance. It follows, therefore, that an application by a wife for maintenance for herself or her children or an application by a husband to vary the amount ordered to be paid by way of maintenance are civil matters, notwithstanding the fact that they may be dealt with summarily in a Police Court.

If after an order has been made and the person against whom it is made fails to comply with the order, then no doubt the matter becomes a criminal cause or matter. Whether notwithstanding the matter being a criminal one the appeal should nevertheless be a civil appeal under the Courts Ordinance and whether section 50(2) of that Ordinance and section 317 of the Criminal Procedure Code can stand side by side are questions which it is not necessary for me to decide until they arise.

In the particular case now before me the only question before the Sessions Court was whether or not the Provisional Order for maintenance made by the Police Court in Singapore should or should not be confirmed as an order for maintenance by the local Court in Penang, and the Provisional Order was in fact confirmed subject to a modification of the amount to be paid. This in my opinion, following the decisions above referred to, was not a criminal cause or matter, so that section 317 of the Criminal Procedure Code had no application and the learned President had, therefore, no power to state a case for the consideration

of the High Court. Any appeal from the President's order would in my view come within the provisions of section 50(2) of the Courts Ordinance quoted above and would be a civil appeal. There is no provision for a Sessions Court to state a case in a civil matter. I therefore decided that there was nothing before me upon which I could adjudicate; but I intimated to Counsel that in case the parties wished to appeal it appeared to me that there would be good grounds for granting an extension of time within which to lodge an appeal on the civil side.

Order accordingly.

NG HOO KIM (f) v. K. A. ABDULLAH & CO.

[Orig. Civ. Juris. (Thomson, J.) September 23, 1952]

[Ipoh — Civil Application No. 11 of 1952]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(j) — Whether "rent" to be considered in relation to whole of premises or to the part sub-let.

In this Reference by the Kinta Rent Assessment Board two questions were raised: (i) Whether "rent" in section 13(1)(j) of the Control of Rent Ordinance means rent paid in respect of the whole of the premises or only in respect of the part sub-let; (ii) Whether the provisions of water and electricity in Ipoh are "Municipal or Town Board Services" within the meaning of the section.

Held, that (1) the word "rent" in section 13(1)(j) of the Control of Rent Ordinance means rent paid in respect of the whole of the premises comprised in the tenancy; (2) the provision of electricity is not in Ipoh a Municipal or Town Board service.

Cases referred to:—

(1) *Soon Siong Poh v. Yeo Siew Lam* (1949) M.L.J. Supp. 20.

(2) *Che Yusof bin Ismail v. Tay Kay Chua* (1952) M.L.J. 133.

REFERENCE by the Rent Assessment Board Kinta.

S. M. Sharma for the applicant.

C. W. Shuttleworth for the respondents.

Cur. Adv. Vult.

Thomson, J.: — This Reference to the Court by the Kinta Rent Assessment Board raises two questions as to the construction of section 13(1)(j) of the Control of Rent Ordinance, 1948, which reads as follows:—

"13. (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely—

(j) where the tenant, having sub-let the premises or part thereof, receives, in respect of such sub-letting, rents (exclusive of any payment by the tenant for Municipal or Town Board services) which exceed in the aggregate seventy-five per cent. of the rent paid by the tenant;....."

The questions which arise are:—

(a) Does the word "rent" in paragraph (j) mean the whole rent paid by the tenant to the landlord in respect of the whole of the premises comprised in the tenancy or does it include only so much of that rent as can be said to be in respect of the portion or portions of the premises sub-let; and

(b) Are the provision of water and the provision of electricity in Ipoh "Municipal or Town Board Services" within the meaning of the section.

With regard to the first of these questions, it was submitted by Mr. Sharma for the landlord that the rent paid by the sub-tenants should be calculated as a percentage of so much of the rent paid by the tenant to the landlord as could be attributed to the portion of the premises actually sub-let to the sub-tenants. He put the point in the following simple way for which I am obliged to him. The rent paid by the tenant to the landlord in the present case was $100 per month, the sub-tenants occupied half of the premises, and therefore for the purposes of paragraph (j) of section 13 the aggregate of the rents paid by them should be treated as a percentage not of $100 but of $50. His main argument was that any other construction might in certain circumstances lead to the result, which he said was absurd, that a tenant might sub-let a very small portion of the premises at a very excessive rent and yet remain protected in his tenancy. He also sought support from certain observations of Taylor, J., in the Singapore case of *Soon Siong Poh v. Yeo Siew Lam*[1].

In my opinion, both these grounds are devoid of substance. The absurdity argument only amounts to saying that there may be extreme cases of a tenant getting more than he is paying for but as the whole effect of the Ordinance is to produce such results in varying degrees I fail to see that the possibility that one tenant may make more profit than another from the protection he enjoys under it is any very valuable aid to its construction. As regards *Soon Siong Poh's* case, it is quite possible that the construction contended for by Mr. Sharma was never considered by Taylor, J., any more than it was considered by myself in the case of *Che Yusof bin Ismail v. Tay Kay Chua*[2]. Both cases, however, were decided on the assumption that the rents paid by the sub-tenants were to be regarded as a percentage of the whole rent paid to the landlord, and must therefore be taken as authority for saying that that is the correct construction.

In any event, to my mind the point is abundantly clear as a matter of ordinary grammatical usage. Paragraph (j) is not to be considered in isolation. Sub-section (1) of section 13 is to be considered as a whole. What it deals with is "any premises comprised in a tenancy" and I can see no room for argument that where the word "rent" occurs without any qualifying